

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

BRAZOS ELECTRIC POWER
COOPERATIVE, INC.,

Debtor.¹

Chapter 11

Case No. 21-30725 (DRJ)

BRAZOS ELECTRIC POWER
COOPERATIVE, INC.,

Plaintiff,

v.

507 Capital LLC; 507 Summit LLC; Cetus
Capital VI, L.P.; Chase Lincoln First
Commercial Corporation; Citigroup Financial
Products Inc.; CrossingBridge Low Duration
High Yield Fund; Destinations Global Fixed
Income Opportunities Fund; Destinations Low
Duration Fixed Income Fund; Koch Energy
Services LLC; Leaffilter North Holdings, Inc.;
NJR Energy Services Co.; OFM II, LP; OU 2
LLC; RiverPark Short Term High Yield;
RiverPark Strategic Income Fund; Total Gas
& Power North America, Inc.; and Two Seas
Global (Master) Fund LP,

Defendants.

Adv. Proc. No. 21-04407(DRJ)

STIPULATION AND AGREED ORDER AUTHORIZING INTERVENTION

WHEREAS, on March 1, 2021, Brazos Electric Power Cooperative, Inc. (the “Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and the Debtor has continued in possession of its property and has

¹ The Debtor in this Chapter 11 case, along with the last four digits of its federal tax identification number is Brazos Electric Power Cooperative, Inc. (4729). Additional information regarding this case may be obtained on the website of the Debtor’s claims and noticing agent at <http://cases.stretto.com/Brazos>. The Debtor’s address is 7616 Bagby Avenue, Waco, TX 76712.

continued to operate and manage its business as a debtor in possession pursuant to sections 1107(a) and 1107 of the Bankruptcy Code;

WHEREAS, on May 5, 2021, the Court entered its *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(B)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(B)(9) Requests, (IV) Approving Notice of Bar Dates, and (V) Granting Related Relief* [Doc. No. 515], which sets forth various deadlines for the filing of proofs of claim in the Chapter 11 Case, including the “General Claims Bar Date” of June 15, 2021;

WHEREAS, ETC Marketing, Ltd. (“ETC”) and Citigroup Financial Products Inc. (“Citigroup”) entered into a Transfer of Claims Agreement dated May 27, 2021 (the “Transfer of Claims Agreement”) that assigned ETC’s claims against the Debtor to Citigroup;

WHEREAS, the Transfer of Claims Agreement Sections 9 and 9(d) provide:

9. Prosecuting and Defending the Transferred Rights Seller shall have the sole responsibility (but not the obligation) to prosecute the Transferred Rights and/or to defend the Transferred Rights against any objection, dispute or litigation that may be filed or commenced in respect thereof which shall be referred to in this Section as “Claim Dispute.”

(d) Buyer may, in its sole and absolute discretion and at any time, notify Seller in writing that Buyer shall either (i) participate with Seller in the defense of the Claim Dispute or (ii) assume the control and defense of the Claim Dispute and/or that Buyer is revoking the Defense Authority, provided that, in either such case, Seller shall cooperate with and assist Buyer in enforcing the Claims, defending against the Claim Dispute and otherwise effectuating the provisions and intent of this Agreement.

WHEREAS, on June 14, 2021, Citigroup filed its Proof of Claim No. 385 in the total amount of \$15,472,239.00 (the “Claim”);

WHEREAS, on November 22, 2021, the Debtor filed *The Debtor's Complaint for Declaratory Relief and Asserting Omnibus Objections to Proofs of Claim Related to Natural Gas Sales to the Debtor*, which prompted Adversary Proceeding No. 21-04407 (The "Adversary Proceeding");

WHEREAS, Citigroup acknowledges that, unless or until it exercises its rights under the Transfer of Claims Agreement and except as provided for in the Transfer of Claims Agreement, ETC shall have the sole responsibility to prosecute the Claim and to defend the Claim Dispute in the Adversary Proceeding. For the avoidance of doubt, upon entry of this Stipulation and Agreed Order, unless or until it exercises its rights under the Transfer of Claims Agreement, Citigroup shall not file individual answers, individual discovery requests, individual briefs and/or individual motions in the Adversary Proceeding; AND

WHEREAS, counsel for the Debtor and ETC met and conferred regarding ETC's intervention in the Adversary Proceeding, and the Debtor has consented to the intervention of ETC for the purpose of fulfilling its defense obligation pursuant to the stipulations set forth herein;

NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND ORDERED:

1. ETC shall be, and hereby is, permitted to intervene in the Adversary Proceeding as an intervenor-defendant under Bankruptcy Rule 7024, and shall, subject to the terms of the Transfer of Claims Agreement, be deemed to have all of the rights and standing of Citigroup as a named defendant in the Debtor's Complaint as it relates to the Claim.

2. Unless or until Citigroup exercises its rights under the Transfer of Claims Agreement, including, without limitation, its rights under Section 9(d) of the Transfer of Claims Agreement, Citigroup shall not file individual answers, individual discovery requests, individual

briefs and/or individual motions in the Adversary Proceeding; provided that, nothing in this Stipulation and Agreed Order shall limit or affect Citigroup's rights under the Transfer of Claims Agreement, including, without limitation, its right to exercise its option under Section 9(d) of the Transfer of Claims Agreement.

3. For the avoidance of doubt, nothing in this Stipulation and Agreed Order shall limit or affect Citigroup's right to file a motion with the Court seeking relief from or related to this Stipulation and Agreed Order.

4. This Stipulation and Agreed Order is immediately effective upon entry by the Court.

5. Neither this Stipulation and Agreed Order nor any of its terms may be modified, altered, amended or waived, except in writing signed by the Parties hereto and approved by the Court.

6. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Stipulation and Agreed Order, and the undersigned parties (on behalf of their respective clients) hereby consent to such jurisdiction to resolve any dispute or controversies arising from or related to this Stipulation and Agreed Order.

IT IS SO ORDERED

Signed on: _____

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

AGREED TO BY:

FOLEY & LARDNER, LLP

/s/ Ronald L. Oran, Jr.
Ronald L. Oran, Jr.
State Bar No. 24072268
Email: roran@foley.com
Drake Lawsage
State Bar No. 24102070
Email: dlawsage@foley.com
Jennifer N. Huckleberry
State Bar No. 24118414
Email: jhuckleberry@foley.com
1000 Louisiana Street, Suite 2000
Houston, TX 77002
Telephone: 713.276.5500
Facsimile: 713.276.5555

Holland N. O'Neil
State Bar No. 14864700
Email: honeil@foley.com
2021 McKinney Avenue, Suite 1600
Dallas, Texas 75201
Telephone: 214.999.4961
Facsimile: 214.999.4667

Timothy C. Mohan
State Bar No. 50559
Email: tmohan@foley.com
600 17th Street, Suite 2020S
Denver, CO 80202
Telephone: 720.437.2000
Facsimile: 720.437.2200

**SPECIAL COUNSEL AND CONFLICTS
COUNSEL TO THE DEBTOR**

MCKOOL SMITH

William D. Wood
State Bar No. 21916500
Email: wwood@mckoolsmith.com
Veronica Manning
State Bar No. 24098033
Email : vmanning@mckoolsmith.com
600 Travis Street, S. 7000
Houston, TX 77002
Telephone : 713.485.7300
Facsimile : 713.485.7344

**SPECIAL COUNSEL AND
CONFLICTS COUNSEL TO THE
DEBTOR ONLY FOR ISSUES
SPECIFIC TO CITIGROUP
FINANCIAL PRODUCTS INC.**

HUNTON ANDREWS KURTH LLP

/s/ Tad Davidson II

Timothy A. (“Tad”) Davidson II

State Bar. No. 24012503

Email: taddavidson@huntonak.com

Ashley L. Harper

State Bar No. 24065272

Email: ashleyharper@huntonak.com

600 Travis Street, Suite 4200

Houston, TX 77002

Telephone: (713) 220-3810

**COUNSEL TO CITIGROUP FINANCIAL
PRODUCTS INC.**

KATTEN MUCHIN ROSENMAN LLP

/s/ John E. Mitchell

John E. Mitchell

State Bar No. 00797095

Email: john.mitchell@katten.com

Yelena E. Archiyan

State Bar No. 24119035

Email: yelena.archiyan@katten.com

2121 North Pearl St., Ste. 1100

Dallas, TX 75201

Houston, TX 77002

Telephone: (214) 765-3600

YETTER COLEMAN LLP

R. Paul Yetter

State Bar No. 22154200

Email: pyetter@yettercoleman.com

Bryce L. Callahan

Email: bcallahan@yettercoleman.com

State Bar No. 24055248

Ali Shan Ali Bhai

Email: asalibhai@yettercoleman.com

State Bar. No. 24121498

811 Main Street, Suite 4100

Houston, TX 77002

Telephone: (713) 632-8000

COUNSEL TO ETC MARKETING, LTD.